

1  
2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA

4 Steven Feeder,

5 Plaintiff

6 v.

7 State of Nevada, et al.,

8 Defendants

Case No. 2:22-cv-00941-CDS-VCF

Order Granting Defendants' Motion to  
Dismiss & Closing Case

[ECF No. 6]

9  
10 Plaintiff Steven Feeder brings this civil-rights action against defendants State of Nevada,  
11 Aaron Ford (Nevada's attorney general), and Michael Kovac (an assistant attorney general).  
12 Feeder was previously charged with interfering with a public officer, provoking a breach of the  
13 peace, and publishing matter inciting a breach of the peace. Compl., ECF No. 1 at ¶ 15.  
14 Eventually, Feeder was found not guilty of, or obtained the dismissal of, all charges brought  
15 against him. *Id.* at ¶ 23–29. He now brings claims for malicious prosecution, abuse of process,  
16 intentional infliction of emotional distress, and negligent infliction of emotional distress against  
17 the defendants. *Id.* at ¶¶ 30–59. The individual defendants assert that absolute prosecutorial  
18 immunity bar Feeder's claims against them and the State of Nevada asserts that the Eleventh  
19 Amendment bars Feeder's claims against it. Mot. Dismiss, ECF No. 6 at 4–5. Because Feeder's  
20 claims cannot overcome either grant of immunity, I grant the defendants' motion to dismiss and  
21 dismiss Feeder's claims with prejudice. I also kindly instruct the Clerk of Court to close this  
22 case.

23 I. Legal standard

24 Under the Federal Rules of Civil Procedure, a district court must dismiss a complaint if it  
25 fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In considering a  
26 motion to dismiss, "all well-pleaded allegations of material fact are taken as true and construed

in a light most favorable to the non-moving party.” *Wyler Summit P’ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). However, legal conclusions are not awarded this same presumption just because they are cast in the form of factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A plaintiff must make sufficient factual allegations to establish a plausible entitlement to relief. *Id.* at 556. And if I grant a motion to dismiss, I should grant leave to amend even if no request to amend is made unless I determine that the pleading could not possibly be cured by the allegation of other facts. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

## II. Discussion

### A. Prosecutorial immunity bars Feeder’s claims against Ford and Kovac.

Feeder brings claims for malicious prosecution, abuse of process, and both flavors of infliction of emotional distress against the individual defendants. ECF No. 1 at ¶¶ 30–59. He alleges that the defendants’ acts underlying his claims include their “lengthy prosecution” of him, their ignorance of the law, and their bringing of claims that were “meritless.” *Id.* at ¶¶ 32, 33. Ford and Kovac move to dismiss those claims on the ground of absolute prosecutorial immunity. ECF No. 6 at 4–5.

“Criminal prosecutors may claim absolute immunity from damages liability for actions ‘intimately associated with the judicial phase of the criminal process,’ such as the prosecutors’ initiation of a prosecution and presentation of the state’s case.” *Torres v. Goddard*, 793 F.3d 1046, 1051 (9th Cir. 2015) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)). Absolute prosecutorial immunity is meant to protect the prosecutor from harassing litigation and to enable him to exercise independent judgment when deciding which suits to bring and in conducting them in court. *Id.* (citing *Kalina v. Fletcher*, 522 U.S. 118, 125 (1997)). “A prosecutor is absolutely immune ‘when performing the traditional functions of an advocate.’” *Id.* (quoting *Kalina*, 522 U.S. at 131). A court determining whether a prosecutor is entitled to such immunity must “focus ‘on the conduct for which immunity is claimed, not on the harm that the conduct may have caused or

1 the question whether it was lawful.” *Id.* (quoting *Buckley v. Fitzsimmons*, 509 U.S. 259, 271 (1993)).  
2 Nevada permits a very limited exception to prosecutorial immunity “where a prosecutor faces an  
3 actual conflict of interest, and files charges [they] know[] to be baseless.” *Stevens v. McGimsey*, 673  
4 P.2d 499, 500 (Nev. 1983).

5 Ford and Kovac are very clearly protected by prosecutorial immunity in this case. Feeder  
6 seeks to impose liability for quintessential acts of criminal prosecutors, namely, prosecuting him  
7 for various crimes. That Feeder was eventually found not guilty or had the charges dismissed has  
8 no bearing on whether he can impose civil liability on his prosecutors. Feeder’s opposition to the  
9 motion to dismiss does not address prosecutorial immunity except to claim that he sues the  
10 defendants as individuals rather than in their official capacities. Resp., ECF No. 7. But Feeder  
11 provides no authority for the proposition that a prosecutor sued in his individual capacity  
12 suddenly loses prosecutorial immunity. *Cf. Lewis v. Clarke*, 581 U.S. 155, 163 (2017) (“An officer in  
13 an individual-capacity action . . . may be able to assert personal immunity defenses, such as, for  
14 example, absolute prosecutorial immunity in certain circumstances.”).

15 Instead, he argues that “the preliminary pleadings establish the lack of probable cause,  
16 malice, and that the criminal proceedings were terminated in [his] favor” without reference to  
17 what actions might constitute the prosecutors’ knowledge of the lack of probable cause, or what  
18 actions might constitute malice on the prosecutors’ part. *Id.* at 6–7. He also does not allege that  
19 either Ford or Kovac had a conflict of interest or filed charges they knew to be baseless. Feeder’s  
20 inability to address prosecutorial immunity in his opposition is grounds for dismissal alone. *See*  
21 LR 7-2(d) (“The failure of an opposing party to file points and authorities in response to any  
22 motion . . . constitutes a consent to the granting of the motion.”). I find that Ford and Kovac are  
23 protected by prosecutorial immunity and dismiss Feeder’s claims against them. I also deny  
24 Feeder leave to amend, as it is clear that the deficiencies of his complaint cannot be saved.

1           B. Feeder fails to meet the federal pleading standards in asserting claims against the State.

2           Feeder brings the same four claims against the State. ECF No. 1 at ¶¶ 30–59. He also  
 3 asserts that the State is liable under a theory of respondeat superior for its officers' actions. ECF  
 4 No. 1 at ¶ 37. I first note that there is no respondeat superior liability under §1983. *Taylor v. List*,  
 5 880 F.2d 1040, 1045 (9th Cir. 1989). And the State avers that regardless, it is entitled to  
 6 immunity from suit in federal court under the Eleventh Amendment. ECF No. 6 at 4. Feeder  
 7 responds that Nevada eradicated its absolute immunity with the enactment of NRS § 41.031.  
 8 ECF No. 7 at 5. He is incorrect.

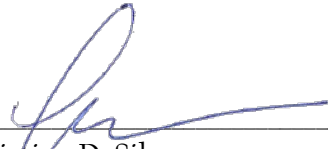
9           The Eleventh Amendment prohibits suits in federal court against a state, regardless of  
 10 the nature of the relief sought, unless the state unequivocally consents. *Pennhurst St. Sch. & Hosp. v.*  
 11 *Halderman*, 465 U.S. 89, 99 (1984). The State of Nevada has explicitly declined to waive its  
 12 immunity from suit in federal court as conferred by the Eleventh Amendment. NRS § 41.031(3);  
 13 *Fixel v. United States*, 737 F. Supp. 593, 599 (D. Nev. 1990). While Feeder points to NRS § 41.031(1)  
 14 in support of his argument that Nevada has waived its immunity from suit, his argument  
 15 misunderstands the statutory scheme. NRS § 41.031(1) waives Nevada's liability against state-  
 16 law claims, subject to the limitations and exclusions described therein. NRS § 41.031(2) provides  
 17 that any action against the State must be "filed in the county where the cause or some part  
 18 thereof arose or in Carson City" (i.e., in state court). And NRS § 41.031(3) provides that,  
 19 notwithstanding NRS §§ 41.031(1)–(2), the "State of Nevada **does not waive its immunity from**  
 20 **suit conferred by Amendment XI of the Constitution of the United States.**" (emphasis  
 21 added). This interpretation of the statutory scheme comports with every authority's reading of  
 22 the statute to date. *See, e.g., Walden v. Nevada*, 945 F.3d 1088, 1092 (9th Cir. 2019) (citing NRS  
 23 § 41.031 in identifying that Nevada statutorily waived its immunity from suit "on state-law  
 24 claims in state court"); *Savage v. Child Welfare Div.*, 2005 WL 8165383, at \*5 (D. Nev. Oct. 11, 2005)  
 25 ("The State of Nevada has not waived its immunity from suit in federal court[.]").  
 26

1 Because Feeder's claims against Nevada are barred by the Eleventh Amendment and his  
2 claims against the individual defendants are barred by prosecutorial immunity, I grant the  
3 defendants' motion to dismiss in its entirety. I also decline to grant Feeder leave to amend  
4 because there are no facts that he could plead which would overcome these grants of immunity.

5 **III. Conclusion**

6 For the foregoing reasons, IT IS THEREFORE ORDERED that the defendants' motion to  
7 dismiss [ECF No. 6] is **GRANTED in its entirety**. I dismiss with prejudice each of Feeder's  
8 four claims for relief. The Clerk of Court is kindly instructed to enter judgment accordingly and  
9 to close this case.

10 DATED: August 4, 2023

11  
12   
13 Cristina D. Silva  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26